MOHD AZAM RAJA ABDULLAH v. PP

COURT OF APPEAL, PUTRAJAYA
MOHTARUDIN BAKI JCA
ZAKARIA SAM JCA
ABDUL RAHMAN SEBLI JCA
[CRIMINAL APPEAL NO: P-05-244-10-2013]
7 JANUARY 2015

CRIMINAL LAW: *Penal Code – Section 302 – Murder – Injuries – Whether sufficient in ordinary course of nature to cause death – Whether intention to cause death relevant – Penal Code, s. 300(c)*

CRIMINAL PROCEDURE: *Appeal – Appeal against conviction and sentence – Whether defence cast reasonable doubt on prosecution's case – Whether conviction and sentence safe*

The appellant was charged under s. 302 of the Penal Code ('the PC') for the murder of one Soh Lian Thye ('deceased'). At the close of the prosecution's case, the trial judge amended the charge to an offence under s. 457 of the PC. The appellant pleaded guilty to the amended charge and was sentenced to 14 years imprisonment and 16 strokes of the rotan. The Public Prosecutor appealed against the decision to the Court of Appeal. The Court of Appeal allowed the appeal and ordered that the defence be called on the charge of murder. When the defence was called, the appellant avoided culpability by saying that he had no intention to cause death to the deceased. The appellant explained that he broke into the shop of the deceased with the intention of committing theft and was startled by the sudden appearance of the deceased who started screaming. Therefore, he grabbed a piece of wood and hit the deceased once on the head and pushed her down. The appellant contended that his intention was only to silence the deceased. Since the appellant's explanation failed to cast any reasonable doubt on the prosecution's case, the trial judge found the appellant guilty and sentenced the appellant to death. Hence the appeal.

Held (dismissing appeal, affirming conviction and sentence)
Per Abdul Rahman Sebli JCA delivering the judgment of the court:

(1) The appellants intention was to be inferred from the outward acts and omissions and not by the excuses for causing the deceased's death. The evidence of the pathologist was that the head injury was fatal and sufficient in the ordinary course of nature to cause death. This was crucial evidence and it was not challenged in cross-examination. The effect in law of such failure was that the evidence was deemed to be accepted. (paras 12 & 13)

A **(2)** As the injury was sufficient in the ordinary course of nature to cause death, the appellant would be caught by cl. (c) of s. 300 of the PC. Intention to cause death was irrelevant where the act falls under this clause. However the intention to cause the particular injury that caused death was relevant. Although some of the injuries could have resulted
B from the fall after the deceased was pushed by the appellant, the fatal head injury was caused by the appellant. This was the reasonable inference that would account for all the known facts, barring fanciful possibilities. (paras 16, 17 & 19)

Bahasa Malaysia *Translation Of Headnotes*

C
Perayu telah dituduh di bawah s. 302 Kanun Keseksaan ('KK') untuk kesalahan membunuh Soh Lian Thye ('si mati'). Pada penutup kes pendakwaan, hakim bicara telah meminda pertuduhan kepada pertuduhan lain di bawah s. 457 KK. Perayu telah mengaku salah terhadap pertuduhan yang dipinda dan dijatuhkan hukuman penjara 14 tahun dan 16 sebatan.
D Pendakwa Raya telah merayu terhadap keputusan tersebut kepada Mahkamah Rayuan. Mahkamah Rayuan telah membenarkan rayuan tersebut dan telah memerintahkan supaya pembelaan dipanggil untuk pertuduhan membunuh. Apabila pembelaan dipanggil, perayu telah mengelakkan kebersalahan dan menyatakan bahawa perayu tidak berniat untuk
E menyebabkan kematian si mati. Perayu menjelaskan bahawa dia telah memecah masuk ke dalam kedai si mati dengan niat untuk mencuri dan dikejutkan oleh kemunculan si mati secara tiba-tiba yang mula menjerit. Oleh itu, perayu telah mengambil sebatang kayu dan memukul si mati sekali di kepala dan menolaknya ke bawah. Perayu menghujahkan bahawa niatnya
F hanya untuk mendiamkan si mati. Oleh kerana penjelasan perayu gagal menimbulkan sebarang keraguan munasabah terhadap kes pendakwaan, hakim bicara telah mendapati perayu bersalah dan menjatuhkan hukuman mati terhadap perayu. Oleh itu rayuan ini.

Diputuskan (menolak rayuan; mengesahkan sabitan dan hukuman)
G **Oleh Abdul Rahman Sebli HMR menyampaikan penghakiman mahkamah:**

(1) Niat perayu hendaklah disimpulkan daripada tindakan dan ketinggalan dan bukan dengan alasan untuk menyebabkan kematian si mati. Pakar patologi telah memberikan keterangan bahawa kecederaan kepala tersebut adalah parah dan memadai dalam perjalanan biasa untuk
H menyebabkan kematian. Ini adalah keterangan penting dan ia tidak dicabar dalam pemeriksaan balas. Kesan kegagalan sebegitu dari segi undang-undang adalah bahawa keterangan tersebut dianggap sebagai diterima.

I **(2)** Oleh kerana kecederaan adalah memadai dalam perjalanan biasa untuk menyebabkan kematian, perayu akan terangkum di bawah kl. (c) s. 300 KK. Niat untuk menyebabkan kematian tidak relevan apabila

tindakan tersebut terangkum di bawah klausa ini. Walau bagaimanapun, niat untuk menyebabkan kecederaan khusus yang mengakibatkan kematian adalah relevan. Walaupun sebahagian daripada kecederaan mungkin telah berlaku apabila si mati jatuh selepas ditolak oleh perayu, kecederaan kepala yang membawa maut disebabkan oleh perayu. Ini adalah kesimpulan yang munasabah dengan mengambil kira semua fakta yang diketahui, menghalang kebarangkalian khayalan.

Case(s) referred to:
Tan Joo Cheng v. PP [1992] 1 SLR 620 ***(refd)***
Wong Swee Chin v. PP [1980] 1 LNS 138 FC ***(refd)***

Legislation referred to:
Penal Code, ss. 80, 300, 457

For the appellant - Rao Jayaanda; M/s Rao & Kamal
For the prosecution - Nadia Hanim Tajuddin; DPP

[Editor's note: Appeal from High Court, Penang; Criminal Trial No: 45-4-2011 (overruled).]

Reported by Sandra Gabriel

JUDGMENT

Abdul Rahman Sebli JCA:

[1] The appellant was charged in the High Court at Penang with murder as specified in the following charge:

> Bahawa kamu pada 2 Mac 2010, di antara jam 5 pagi hingga 9 pagi, di dalam rumah kedai beralamat No. 34, Jalan Hurdwara, di dalam Timur laut, dalam Negeri Pulau Pinang, telah membunuh SOH LIAN THYE No KP: 340122-02-5072 dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

[2] He claimed trial to the charge and at the close of the prosecution case the learned trial judge amended the charge to an offence under s. 457 of the Penal Code as he found that the evidence was insufficient to establish a *prima facie* case of murder but sufficient to establish a *prima facie* case of housebreaking with intent to commit an offence punishable with imprisonment. The appellant pleaded guilty to the amended charge and was sentenced to 14 years imprisonment and 16 strokes of the rotan.

[3] The Public Prosecutor appealed to the Court of Appeal against the decision. The appeal was allowed and it was ordered that the defence be called on the murder charge. The learned trial judge duly called for the defence and at the conclusion of the trial he found the appellant guilty as charged and sentenced him to death. This is the appellant's appeal against the conviction and sentence.

[4] By allowing the prosecution's appeal and ordering for the defence to be called, it is implicit that the Court of Appeal had found as a matter of law that a *prima facie* case of murder had been established against the appellant.

A Thus the only issue for the learned trial judge to consider was whether the appellant's explanation if any had cast a reasonable doubt in the prosecution's case as to his guilt.

[5] When his defence was called the appellant elected to give evidence on oath. He did not deny causing the deceased's death but avoided culpability
B by saying that he had no intention to cause death. His explanation was that on 2 March 2010 at about 5am he broke into the deceased's shop with the intention of committing theft. He said he was not armed with any weapon and had entered the shop through the back door. Once inside the shop he took some money from the drawer and three bracelets later confirmed to be
C belonging to the deceased's daughter.

[6] As he was helping himself to the money in the drawer, he was startled by the sudden appearance of the deceased who immediately raised the alarm by screaming. Fearing that her scream might attract public attention, the appellant grabbed a piece of wood which he said happened to be lying nearby
D and used it to hit the deceased once in the head and pushed her down. It must have been a violent hit as it resulted in the death of the 76 year old deceased. The evidence of the pathologist Dato' Dr. Bhupinder Singh (SP14) is that the deceased's death was due to "severe head injury due to blunt trauma to the head".

E

[7] Before he fled the appellant put the stolen properties inside a plastic bag. But as he was trying to get out of the shop the deceased's husband ('SP11') saw him and he shouted for help. Thus began what proved to be the appellant's failed attempt to escape. First he climbed the ceiling of the shop and then broke the asbestos roof. He managed to get out through the broken
F roof and started to run on the rooftop. However as fate would have it he fell to the ground and was caught by members of the public who then assaulted him. He said they broke both his legs ("kaki saya dipatahkan oleh orang ramai") before handing him over to the police.

G **[8]** The prosecution's version of the escape is slightly different but not inconsistent with the appellant's evidence that he made his escape through the roof. Witness Ee Hock Hin ('SP13') described it as follows:

> Then I heard some cracking noise coming from the deceased's house. I realized that the thief was attempting to break the roof tiles. At this
H juncture, I ran upstairs to my front room to get a clearer view. I still heard some more cracking noise. Then I saw a man attempting to come out from the roof tiles which were cracked. The man managed to stick his head out from the hole and his two hands resting on the roof tiles. Within a few seconds, the tiles gave way due to his weight and he fell down again ...

I **[9]** SP13 estimated the time to be around 7.15 in the morning just after he came back from the market. It is obvious that the appellant had been trapped inside the shop and had nowhere to escape except through the roof.

As for the weapon used the appellant's evidence is that it was a piece of wood measuring about 2 feet long and 2 inch x 1 inch in size ("lebih kurang 2 kaki dan sebesar lebih kurang 2 inci x 1 inci"). This corresponds with the wood marked exh. P19A which was seized at the scene of crime. The photo of the wood can be seen at photo F of exh. P5 at p. 145 vol. II of the record of appeal. According to the pathologist this wood could cause the injuries found on the deceased's head.

[10] Having considered the appellant's explanation carefully the learned trial judge found that his explanation failed to cast any reasonable doubt in the prosecution case and that the prosecution had proved its case beyond reasonable doubt. He rejected the appellant's claim that he had no intention to murder the deceased.

[11] It was submitted in the court below and repeated before us that the intention to cause death cannot not be attributed to the appellant as there was a total lack of motive, premeditated plan or history of feud between the appellant and the deceased. It was argued that the appellant only struck the deceased once and that too because he wanted to stop the deceased from screaming. In other words his intention was only to silence the deceased, not to cause death.

[12] With due respect to learned counsel, the appellant's intention is to be inferred from his outward acts and omissions and not by his excuses for causing the deceased's death unless he was relying on any of the general exceptions under Chapter IV of the Penal Code which he was not. Even if the appellant had wanted to rely on any of the general exceptions he could not as the exceptions do not apply to a thief who intentionally causes death to his victim. It will be a strange working of the law if the exceptions do apply in such situation.

[13] The evidence of the pathologist is that the head injury was fatal and sufficient in the ordinary course of nature to cause death. According to him the chances of survival was minimal due to intraventricular haemorrhage and also due to swelling of the brain. This is crucial evidence and it was not challenged at all in cross-examination and no reason was given as to why this was not done. The effect in law of such failure is that the evidence is deemed to be accepted: *Wong Swee Chin v. PP* [1980] 1 LNS 138; [1981] 1 MLJ 212.

[14] Thus, even assuming for a moment that there was no intention to cause death as contended by counsel, the appellant's act of intentionally causing the head injury would still be murder under cl. (c) of s. 300 of the Penal Code which stipulates as follows:

> 300. Except in the cases hereinafter excepted, culpable homicide is murder -
>
> (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;"

[15] To prove murder under this clause the prosecution is only required to establish two factual elements, namely:

(1) The bodily injury was intended.

(2) The bodily injury was sufficient in the ordinary course of nature to cause death.

[16] By the appellant's own admission the injury to the deceased's head was inflicted intentionally. It was not his defence that he had hit the deceased's head by accident. Even if he had hit her by accident it would not avail him of the statutory defence under s. 80 of the Penal Code as he was not doing a lawful act in the first place. As the injury was sufficient in the ordinary course of nature to cause death, the appellant would be caught by cl. (c) of s. 300.

[17] Intention to cause death is irrelevant where the act falls under this clause. What is relevant is the intention to inflict the particular injury that caused death. In *Tan Joo Cheng v. PP* [1992] 1 SLR 620 the Supreme Court of Singapore held that where the act falls under s. 300 cl. (c) of the Singapore Penal Code which is in *pari materia* with our corresponding provision, it would still be murder even if the intention was to inflict only a relatively minor injury.

[18] Whether the injury is sufficient in the ordinary course of nature to cause death within the meaning of cl. (c) of s. 300 is a question of fact for the court to decide. Since however this is a matter that is in the realm of forensic medicine, expert medical evidence is necessary to assist the court in coming to a finding.

[19] The appellant's claim that he struck the deceased only once cannot be true having regard to the unchallenged evidence of the pathologist whose testimony is that more than one injury was found on the deceased's head. Even if some of the injuries could have resulted from a fall after the deceased was pushed by the appellant, the fatal head injury could only have been caused by the appellant. That is the only reasonable inference that will account for all the known facts, barring fanciful possibilities.

[20] For reasons aforesaid, we found that the learned judge was not wrong in finding the appellant guilty of the offence charged. Consequently we dismissed his appeal against conviction and affirmed the death sentence passed by the learned trial judge.